IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9676 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHARDABEN PRABHUDAS MANEK - Petitioner(s)

Versus

STATE OF GUJARAT & 7 - Respondent(s)

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Appearance :

MR BD KARIA for Petitioner(s) : 1,
MRS FALGUNI PATEL AGP for Respondent(s) : 1 - 2.
MR HARIN P RAVAL for Respondent(s) : 3,
M/S THAKKAR ASSOC. for Respondent(s) : 4 - 8.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 05/12/2005

ORAL JUDGMENT

1. The petitioner has challenged an order dated 11/1/2001 passed by the State Government while deciding

Revision Application No. 7/1998 filed by respondent nos. 4 to 8 herein.

2. Short facts leading to the present petition are that the Dhrangadhra Nagarpalika had passed a resolution dated 28/7/1996. Vide the said resolution occupation of respondent nos. 4 to 8 herein is sought to be regularised on charging of a sum of Rs.25,000/-. The case of the petitioner is that such a resolution could not have been passed and the same was illegal. It is contended that said respondents were occupying land which is part of a public road, that legalizing and regularizing the occupation of the respondent nos. 4 to 8 results into loss and damage to the petitioner.

3. The petitioner, therefore, approached the Collector, Surrendranagar urging him to exercise power u/s 258 of the Gujarat Municipalities Act. The Collector allowed the application filed by the petitioner and by his order dated 26th March, 1997 set aside the resolution passed by the Municipality on 28/7/1996.

4. Private respondents who were aggrieved by the order passed by the Collector first approached this Court by filing Special Civil Application No. 7550/1997. This

petition came to be withdrawn on 21/10/1997 for approaching the State Government. Eventually, these respondents approached the State Government against the decision of the Collector. Interestingly though the Collector had exercised powers u/s 258 of the Gujarat Municipalities Act at the instance of the petitioner, in a Revision Application filed before the State Government challenging the order passed by the Collector, the private respondents did not join the petitioner as a party. The revision application filed by respondent nos. 4 to 8 came to be allowed by the State Government when the Dy. Secretary, Urban Development and Urban Housing Department, Govt. of Gujarat on 11/1/2001 passed an order setting aside the order of the Collector passed on 26/3/1997. In the order dated 11/1/2001 it has been concluded that the Collector did not have power to pass the order dated 26/3/1997 u/s 258(1) of the Gujarat Municipalities Act. It is this order of the State Government which the petitioner has challenged before this Court.

5. At the outset, it can be stated that the order passed by the Government is required to be set aside on two grounds. Firstly, the Collector passed the order on 26/3/1997 in an application filed by the petitioner. The

petitioner, therefore, before the Collector challenged the resolution passed by the Municipality which the Collector quashed by his order dated 26/3/1997. In the revision application that the respondent nos. 4 to 8 filed before the State Government, the petitioner was therefore a necessary party. He was not joined as party respondent by respondent nos. 4 to 8 herein. The State Government also did not take care to hear the petitioner by issuance of notice. On this short ground itself the order passed by the State Government must fail.

6. Secondly the State Government has concluded that the Collector did not have power to interfere with the resolution passed by the Municipality in exercise of powers u/s 258(1) of the Gujarat Municipalities Act for coming to such a conclusion. No reasons are stated in the impugned order dated 11/1/2001. Such a conclusion, therefore, is without recording of reasons. Since I am in the process of remanding the proceedings to the State Government for fresh consideration and disposal in accordance with law, I refrain from making any observations regarding the nature of powers exercised by the Collector. Suffice to say at this stage that the conclusion of the State Government was without assigning any reasons.

7. In the result while allowing the petition order dated 11/1/2001 passed by the Dy. Secretary is quashed. Proceedings are remanded to the State Government for fresh consideration and disposal in accordance with law after permitting the petitioner to participate in the remanded revision proceedings. For the above purpose it would not be necessary for either the petitioner to make a formal application to be joined as party respondent or for the State Government to issue a separate notice calling upon the petitioner to make his submissions. It would be sufficient compliance with this order if the State Government informs the petitioner on the fresh date of hearing and permits him to make his representation and participate in the further proceedings.

8. With these directions, the petition is disposed of. Rule made absolute to the above extent. No order as to costs.

(Akil Kureshi, J.)

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